



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. NOR 38302S] [Docket No. NOR 38376S]

United States Department of Energy and United States Department of Defense v. Baltimore & Ohio Railroad Company, et al.; and United States Department of Energy and United States Department of Defense v. Aberdeen & Rockfish Railroad Company, et al.

AGENCY: Surface Transportation Board.

ACTION: Final Decision.

SUMMARY: The Surface Transportation Board (Board) has approved the settlement agreement (Agreement) negotiated by the United States Departments of Energy and Defense (the Government) on the one hand and BNSF Railway Company (BNSF) on the other hand; prescribed the Agreement's rate and rate update methodology and revenue-to-variable cost (R/VC) ratios as the maximum reasonable rates; and continued to hold these proceedings in abeyance as to the remaining railroad defendants to permit continued settlement negotiations.

EFFECTIVE DATE: The decision is effective on September 25, 2013.

FOR FURTHER INFORMATION CONTACT: Marc Lerner, (202) 245-0390.

[Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTAL INFORMATION: In a decision served on August 26, 2013, the Board, under 49 U.S.C. 10704, approved the Agreement negotiated by the Government and BNSF to settle these rate reasonableness complaints as between them only. The Agreement—which applies broadly to the nationwide movement on BNSF’s lines of irradiated spent fuel, parts and constituents; spent nuclear fuel moving from a foreign country to the United States for disposal; empty casks; radioactive waste materials; and buffer and escort cars (collectively, Covered Movements) and is structured to cover movements to or from unanticipated geographic areas or in as-yet-unknown types of equipment—is to be implemented by BNSF tendering rate quotations to the Government under 49 U.S.C. 10721.

In addition, the Board: (1) prescribed the Agreement’s rate and rate update methodology and R/VC ratios (not to exceed 1.80, 2.50, or 3.51 times the shipment cost, depending on commodity type, using BNSF’s most current system-average variable costs computed using the Board’s Uniform Railroad Costing System) to establish the maximum reasonable rates; (2) dismissed BNSF as a defendant in these proceedings; (3) extinguished all of BNSF’s liability and that of its predecessors and subsidiaries for all reparations on past shipments of Covered Movements in which they participated, both insofar as the Government is involved and insofar as any connecting rail carrier may seek contribution; (4) preserved the liability of connecting carriers for reparations as to their portion of the charges assessed on through routes that include(d) BNSF; (5) relieved BNSF from any further requirement to participate in these proceedings, except in response to a properly issued subpoena under the Board’s rules; and (6) continued to hold

these proceedings in abeyance, subject to the Government reporting quarterly to the Board on the progress of settlement negotiations with remaining railroad defendants.

The Board also: (1) endorsed the Agreement's non-participation clause, Paragraph 14, "Reparation Claims and Rate Challenges Extinguished," ruling that it will not entertain cross-complaints under 49 CFR 1111.4(c) against BNSF in proceedings involving the Government's claims for reparations against connecting carriers; (2) clarified that the terms and obligations of the Agreement, including the prescribed rate and rate update methodologies and maximum R/VC ratios, will be binding only as between the Government and BNSF, will have no precedential effect as to the reasonableness of the rates or the common carrier obligations of non-consenting rail carrier parties in future proceedings or negotiations, and will not be considered a presumptive model for negotiations between CSXT and the Government; and (3) dismissed BNSF as a party from (a) the Government's pending motion, filed in this proceeding on October 3, 1994, to sever issues relating to the quantity of service, including number of routes open for moving radioactive materials nationwide, and to consolidate tariff questions, and (b) the railroad defendants' pending petition, filed on January 18, 1996, to dismiss the complaints in these proceedings.

The Board's decision is available on our website at "WWW.STB.DOT.GOV."

Decided: August 19, 2013.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

Derrick A. Gardner

Clearance Clerk

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